

# Citizen Action

## News

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## Product Liability Fraud

*U.S. Representative John Conyers, Jr., Ranking Member of House Judiciary Committee*

In the 104th Congress, a powerful industry coalition sought to adopt anti-consumer medical malpractice and product liability legislation. Their product liability bill would have preempted state law by severely restricting punitive damages, limiting the liability of product sellers and joint wrongdoers, and preventing injured victims from seeking any compensation for products more than 15 years old. Thanks to Citizen Action and other consumer groups, we were successful not only in slowing the legislation down, but ultimately defeating it. Unfortunately, the self-styled tort reformers will be back in the 105th Congress, starting with product liability. We will again be counting on Citizen Action's members to show their opposition to these dangerous measures.

The truth is, proponents of the product liability legislation were selling the American public a false bill of goods. Although the bill considered last Congress was characterized as a panacea that would have reigned in the "explosion" in product liability lawsuits, established uniform and predictable liability rules, and enhanced American competitiveness; the reality is the legislation would have brought about an increase in the number of dangerous and deadly products sold, while shifting injury costs from responsible manufacturers to individual victims and society as a whole.

Rhetoric to the contrary, there is simply no explosion in product liability lawsuits. The most recent study by the Bureau of Justice Statistics found that product liability cases represent a mere 1.67 percent of civil cases. And the clear trend of product liability filings as well as damages awarded has been decreasing, with product liability insurance premiums dropping more than 28 percent in the last five years. Limiting punitive damages is also misguided. The studies clearly establish that jury awards of punitive damages are incredibly rare — an average of only 16 per year from 1965-1990. And the few instances in which punitive damages have been awarded have played a key role in removing deadly products from the marketplace, such as asbestos, flammable children's pajamas, and the Cooper-7 intrauterine device.

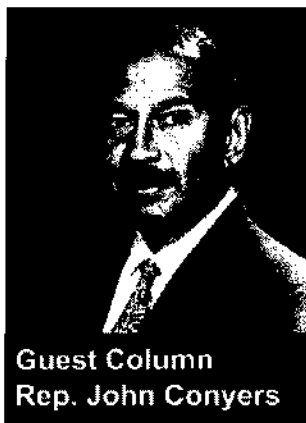
Claims of "uniformity" are also patently false. Instead of creating a set of standard rules protecting defendants, the legislation would have left victims to the vagaries of state law. For example, the bill imposed a cap on punitive damages unless the state has a more restrictive dollar limit. And the bill's fifteen year statute of repose would have applied unless a state has adopted a shorter statutory time period.

Supporters of product liability legislation argued that litigation costs account for a greater share of product costs in the United States than foreign countries, placing our companies at a competitive disadvantage. What they fail to note is that the total of all product liability costs represent a mere 1 cent per five dollar purchase, hardly a decisive competitive factor. And countries with less stringent tort systems typically mandate more onerous government safety regulations and assess greater taxes to provide for universal health and compensation systems — not a likely result in the present political environment.

It's also somewhat disingenuous to presume that the same corporations which are "downsizing" and "outsourcing" hundreds of thousands of jobs a year will use savings from product liability litigation to create more domestic jobs, rather than further pad their profits. Ironically, the one provision in the bill which would have helped U.S. firms compete — by making it easier for American consumers to sue negligent foreign manufacturers on the same terms as American firms — was quietly dropped in conference at the insistence of foreign lobbyists.

Perhaps the bill's greatest lie was that legislative opposition stemmed from political pressure imposed by lawyers. The real balance of political power weighs strongly in favor of the proponents of product liability legislation. During the three years leading up to the product liability vote, industry and insurance PACs supportive of the legislation had given more than \$26 million to congressional candidates, while the trial lawyers association had given less than \$3 million. As a result, it shouldn't come as any surprise that the legislation was chock-full of special interest goodies. Gun sellers and bar owners obtained language limiting their potential liability for careless sales to third parties under negligent entrustment and Dram shop laws. Electricity, water, and gas utilities obtained a provision which would have overruled liability laws in states which held them strictly liable for utility disasters. And in the most brazen special interest grab of all, big business decided they shouldn't be subject to any of the bill's limitations regarding defective products they acquire. What's good for employees was apparently not good enough for their bosses.

Labeling legislation as "reform" doesn't make it so. No amount of misinformation can change the fact that the principal motivating factor behind the product liability bill was corporate profits, not consumer or employee safety or American competitiveness. That's why those who care about fairness and protecting public safety need to continue to make their voices heard this Congress.



Guest Column  
Rep. John Conyers